

## SENATE BILL NO. 344

INTRODUCED BY WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT PUNITIVE DAMAGES LIMITATIONS DO NOT APPLY IF THE TORTFEASOR WAS UNDER THE INFLUENCE OF ALCOHOL OR DANGEROUS DRUGS; REQUIRING PUNITIVE DAMAGES AWARDS IN CIVIL CASES TO BE DIVIDED BETWEEN THE PLAINTIFF AND THE STATE; PROVIDING THAT THE STATE'S SHARE BE USED TO FUND THE CRIME VICTIMS COMPENSATION AND ASSISTANCE PROGRAM IN THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 27-1-220 AND 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 27-1-220, MCA, is amended to read:

**"27-1-220. Punitive damages -- when allowed -- limitation.** (1) Except as otherwise expressly provided by statute and subject to subsection (3), a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) ~~An (A) EXCEPT AS PROVIDED IN SUBSECTION (3)(B), AN~~ award for punitive damages may not exceed \$10 million or 3% of a defendant's net worth, whichever is less. This subsection does not limit punitive damages that may be awarded in class action lawsuits. ~~This subsection~~

(B) THE LIMITATION ON AWARDS OF PUNITIVE DAMAGES PROVIDED FOR IN SUBSECTION (3)(A) does not apply if the defendant was under the influence of alcohol or ~~drugs~~ DANGEROUS DRUGS, AS DEFINED IN 50-32-101, at the time of the wrongdoing and if the influence of alcohol or DANGEROUS drugs substantially contributed to the wrongdoing. THE EXEMPTION FROM PUNITIVE DAMAGES LIMITATION PROVIDED FOR IN THIS SUBSECTION (3)(B) DOES NOT

1 APPLY TO A PERSON WHO MAY BE HELD LIABLE FOR DAMAGES ONLY BECAUSE THE PERSON IS RESPONSIBLE FOR THE ACTS  
2 OF ANOTHER PERSON. THIS SUBSECTION (3)(B) MAY NOT, UNDER ANY THEORY OF VICARIOUS LIABILITY, INCLUDING THE  
3 DOCTRINE OF RESPONDEAT SUPERIOR, ALLOW AN AWARD OF PUNITIVE DAMAGES IN EXCESS OF THE PUNITIVE DAMAGES  
4 LIMITATION PROVIDED FOR IN SUBSECTION (3)(A) AGAINST ANY PERSON WHOSE LIABILITY DEPENDS UPON THE CULPABILITY  
5 OF ANOTHER PERSON WHO WAS THE WRONGDOER."  
6

7 **Section 2.** Section 27-1-221, MCA, is amended to read:

8 **"27-1-221. Punitive damages -- liability -- proof -- award.** (1) Subject to the provisions of 27-1-220  
9 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of  
10 actual fraud or actual malice.

11 (2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally  
12 disregards facts that create a high probability of injury to the plaintiff and:

13 (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to  
14 the plaintiff; or

15 (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

16 (3) A defendant is guilty of actual fraud if the defendant:

17 (a) makes a representation with knowledge of its falsity; or

18 (b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or  
19 otherwise causing injury.

20 (4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant  
21 and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2,  
22 do not apply to proof of actual fraud under this section.

23 (5) All elements of the claim for punitive damages must be proved by clear and convincing evidence.  
24 Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the  
25 correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less  
26 than beyond a reasonable doubt.

27 (6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

28 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not  
29 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a  
30 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be

determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

- (i) the nature and reprehensibility of the defendant's wrongdoing;
- (ii) the extent of the defendant's wrongdoing;
- (iii) the intent of the defendant in committing the wrong;
- (iv) the profitability of the defendant's wrongdoing, if applicable;
- (v) the amount of actual damages awarded by the jury;
- (vi) the defendant's net worth;
- (vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;
- (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
- (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) When punitive damages are awarded by a judge or jury, the amount of the punitive damages must be apportioned as follows:

(a) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the clerk of district court. The clerk of district court shall forward any amount collected under this subsection (8)(a) to the state treasurer within 60 days of receipt for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1.

(b) 50%, less costs and attorney fees as provided in subsection (9), must be paid to the party to whom the punitive damages were awarded.

(9) The costs of litigation, including reasonable attorney fees, must be deducted from the full punitive damages award before apportionment under subsection (8).

~~(9)~~(10) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

**NEW SECTION.** **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to causes of action arising on or after [the effective date of this act].

- END -